WARTIME EXPERIENCES OF THE NATIONAL LABOR RELATIONS BOARD

(1941-1945)

BY

FRED WITNEY

A.B., University of Illinois, 1940
A.M., University of Illinois, 1941

AN ABSTRACT OF A THESIS

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY IN ECONOMICS
IN THE GRADUATE SCHOOL OF THE
UNIVERSITY OF ILLINOIS, 1947

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ACKNOWLEDGMENTS

I wish to express my deep gratitude to Professor E. B. McNatt who directed the dissertation. His high standards of scholarship, critical observations, conscientious efforts, and sincere interest have been invaluable in the development of the project. The financial aid and other assistance provided by the Social Science Research Council materially facilitated the preparation of the study.

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Some major sources utilized in the preparation of the study include *Decisions and Orders of the N. L. R. B.*, *Annual Reports of the N. L. R. B.*, *Decisions and Orders of the National War Labor Board as contained in War Labor Reports*, *Decisions of the Comptroller General of the United States*, *Executive Orders of the President of the United States*, *Fair Employment Practice Committee First Report*, *Congressional Record*, *Hearings of Senate and House Committees*, and *Decisions of the Supreme Court of the United States and of the Circuit Courts of Appeals.*

The following abbreviations are used in the dissertation and in the abstract: National Labor Relations Board—N. L. R. B.; National War Labor Board—N. W. L. B.; National Defense Mediation Board—N. D. M. B.; Fair Employment Practice Committee—F. E. P. C.

WARTIME EXPERIENCES OF THE NATIONAL LABOR RELATIONS BOARD (1941-1945)

An analysis of the war period indicates that the National Labor Relations Board was deeply involved in World War II. As the result of the unprecedented level of wartime employment and trade union organizational activities, the Board was required to dispose of an enormous wartime work load. In addition, the majority of the Board's cases involved industrial facilities directly engaged in the production of war materials. The wartime work of the N. L. R. B. was also affected by (1) the enactment of wartime legislation; (2) the creation of federal war labor agencies; and (3) the development of wartime problems arising apart from wartime legislation and labor agencies. The chief purpose of this study is to present a critical, rather than historical or statistical, analysis of the wartime experiences of the National Labor Relations Board. Beyond the study's academic value, it is hoped that its conclusions will constitute a basis upon which proposed post-war amendments to the National Labor Relations Act may be evaluated. Since several of the N. L. R. B. wartime rulings have been reaffirmed in the post-war period, a presentation of the circumstances under which the precedents were originally established may also be of value. Finally, the study could be of particular significance in the event of any subsequent national emergency, such as a future war.

The motivating force prompting the amendment of the N. L. R. B. Appropriation Act of 1944 was the celebrated *Kaiser Shipbuilding* cases. Involved in these cases was a closed-shop contract executed by Mr. Kaiser with an alleged minority and company-assisted labor union. Before the National Labor Relations Board was able to decide the cases, Congress enacted an amendment to the N. L. R. B. Appropri-

ation Act of 1944 which precluded further action by the Board. Under the terms of the amendment, the N. L. R. B. was forbidden to spend any of its funds to enjoin unfair labor practices springing from a contract unless a charge had been filed before the agreement was three months old. However, the limitation was not effective unless a notice had been posted during the ninety-day challenge period informing all interested parties that a contract had been executed and that the agreement could be inspected at an accessible location. Subsequent developments disclosed that the practical effects of the limitation seriously limited some normal activities of the N. L. R. B. Because of a ruling rendered by the Comptroller General of the United States, the 1944 amendment protected employers engaging in unfair labor practices stemming from contracts executed with company-dominated labor organizations. By virtue of another ruling of the Comptroller General, contracts executed with minority or company-dominated unions containing automatic renewal clauses could have operated as a permanent bar to N. L. R. B. remedial action. During the fiscal year 1944, the appropriation amendment prevented the N. L. R. B. from proceeding in ninety-five cases. These cases involved company-dominated unions, company-assisted unions, discriminatory discharge of employees, and refusals of employers to bargain with majority unions.

As a result of the Board's experience with the 1944 limitation, the provision was restudied when Congress considered the N. L. R. B. Appropriation Act of 1945. As finally adopted, the 1945 amendment, which subsequently was reaffirmed by Congress for the fiscal years 1946 and 1947, removes company-dominated unions, and unfair labor practices arising from contracts executed with such organizations, from the protection of the limitation. In addition, the current limitation provides an annual opportunity for employees to challenge contracts which provide for automatic renewal. When squared with the basic principles of the National Labor Relations Act, the present amendment,

though less restrictive than the original version, is still open to question, for the amendment limits N. L. R. B. action in unfair labor practice cases arising out of contracts involving minority unions.

Under the terms of the War Labor Disputes Act, the N. L. R. B. was required to poll war workers on the issue of interrupting war production on the 30th day after the receipt of a strike-notice. No strike could lawfully take place in a privately-operated war plant until the Board had conducted such a strike vote. During the period from June 25, 1943, through June 25, 1944, the first full year of the operation of the War Labor Disputes Act, a majority of the workers polled voted to strike in 203 elections out of the 230 which the Board conducted. However, only sixty-four strikes actually took place subsequent to the strike polls. In 1945, the Board administered 1,445 strike polls, and a majority of the workers cast ballots in favor of striking in 1,249 of these cases, although only 213 strikes were actually carried out. In view of this experience, it appears that the requirement of strike elections had little influence on the number of work stoppages carried out. Despite the large number of favorable strike votes, workers actually interrupted war production in a comparatively small number of cases after the ballots were taken. Most of these work stoppages probably would have occurred even if strike polls had not been required. In addition, since a favorable strike vote provided a basis for apparent government approval for a work stoppage, one might have expected more strikes than actually occurred. Had no strike vote been taken, the United States Conciliation Service, the National War Labor Board, or the efforts of public-spirited employers and union officials might have accomplished a peaceful settlement of the dispute. Instead, a favorable strike vote appeared to be a mandate for a strike.

It might have been anticipated that the Board's ability to administer the Wagner Act would be impaired to the

degree that the agency's energies and funds were directed to duties in connection with strike votes. With the termination of World War II, trade unions, released from labor's wartime no-strike pledge, flooded the N. L. R. B. with strike-notices. So many notices were filed during the months following the end of the war that four of the Board's twenty-four regional offices completely neglected their Wagner Act duties and devoted their full attention to strike votes. One half of the other regional offices were concerned predominantly with the administration of strike elections. War production and post-war industrial reconversion probably would have been advanced had the N. L. R. B. been able to devote its full attention to responsibilities under the Wagner Act.

An inspection of the price-control measures imposed during World War II indicates that they contained several safeguards designed to preserve the essential guarantees of the National Labor Relations Act. Both the President and the Congress apparently believed that an effective wartime price-control and wage-stabilization program could be implemented without diluting the substantive features of the Wagner Act. Despite these considerations, the N. L. R. B. in the *American News* case, with former Board Chairman Millis dissenting, ruled that employees who engaged in a strike to compel an employer to grant a wage increase in violation of the Wage Stabilization Act of October 2, 1942, lost all rights guaranteed by the Wagner Act. The Board ruled that the provisions of the Wagner Act were not available to the strikers because their strike was carried out for an illegal purpose. Though Dr. Millis did not defend such strikes, he believed that the Board could have discouraged them without resorting to the "legality-of-objective" test. To accomplish this purpose, he would have reinstated the strikers without back pay.

In enacting the Telegraph Merger Act, which authorized the consolidation of the Western Union and Postal Telegraph

facilities, Congress, in order to insure the carriers' employees some security with respect to jobs and compensation, provided the workers of the telegraph industry with a series of minimum employment rights. Congress charged the National Labor Relations Board with the responsibility for implementing these rights. To accommodate the new duties, the Board made appropriate amendments to its rules of procedure. However, the influence of the Telegraph Merger Act on the operations of the N. L. R. B. was actually much smaller than that of the amendments to appropriation acts and the responsibilities in connection with strike votes. Since the agency was required to dispose of only a small number of cases under the Telegraph Merger Act, the N. L. R. B. energies were not greatly diverted from the task of administering the National Labor Relations Act. Of greater social significance than these enforcement duties was the problem of the certification of the bargaining agent of the consolidated company's employees. Prior to the merger, unions affiliated with the Congress of Industrial Organizations represented the Postal Telegraph workers and trade unions of the American Federation of Labor bargained for most of the Western Union workers. To provide the consolidated carrier's workers, who totaled about 70,000, with the opportunity to select a bargaining agent, the N. L. R. B., as a result of the nation-wide character of the telegraph industry, conducted the most extensive bargaining election of its career. As a wartime jurisdictional strike in the telegraph industry might have proved catastrophic, it was of great importance that the workers of the Western Union Company were able to select their bargaining agents through the election machinery of the N. L. R. B.

In order to aid the nation in the prosecution of World War II, the President of the United States established the National Defense Mediation Board, the National War Labor Board, and the Fair Employment Practice Committee. An important phase of the wartime operations of the National Labor Relations Board arose from its relationships with

these labor tribunals. The National Defense Mediation Board, which operated during the period before Pearl Harbor, was charged with the responsibility of adjusting labor disputes which threatened to interfere with the nation's program for war-material production. Since many of these disputes involved principles of the Wagner Act, the N. D. M. B. frequently sought the advice of the N. L. R. B. before rendering decisions. This was necessary because the N. D. M. B. desired not to issue any recommendation which could implicate employers in unfair labor practices. The N. D. M. B., for example, awarded the maintenance-of-membership arrangement only after the N. L. R. B. ruled that an employer executing a contract containing this union-security device would not violate the Wagner Act. In general, the N. D. M. B., anxious to avoid a jurisdictional conflict with the N. L. R. B., refused to settle organizational disputes, and instead referred these cases to the latter tribunal. However, the N. D. M. B. did recommend that employers bargain collectively with N. L. R. B. certified unions, and frequently requested the N. L. R. B. to give priority to disputes which threatened the production of war-material.

After the United States entered World War II, the National War Labor Board replaced the National Defense Mediation Board. The War Labor Board's primary function, like that of the N. D. M. B., was the adjustment of disputes which might obstruct war production. However, while the N. D. M. B. was merely empowered to recommend solutions for labor disputes, the N. W. L. B. was authorized to settle finally controversies which threatened war production. Both the President and the Congress, anxious to protect the provisions of the Wagner Act from the War Labor Board's extraordinary powers, specifically enjoined the N. W. L. B. from issuing directives inconsistent with N. L. R. B. policy. Moreover, the President prohibited the N. W. L. B. from assuming primary jurisdiction over any labor dispute for which procedures for adjustment were already in existence. Only when these procedures had been exhausted was the

War Labor Board permitted to entertain such controversies. From these considerations, it would appear that the N. L. R. B., in war as in peace, was to have original and exclusive jurisdiction over all organizational disputes.

However, under the assumption that organizational controversies were a threat to uninterrupted war production, the N. W. L. B., despite the apparent intent of the President and of the Congress, broadly construed its powers and took jurisdiction over matters normally subject to the authority of the N. L. R. B. Thus the N. W. L. B. directed the reinstatement of employees discriminatorily discharged, and ordered employers to bargain with labor organizations certified by the N. L. R. B. On the other hand, the National War Labor Board consistently refused to designate bargaining units, declined to conduct representation elections, and refused to certify bargaining agents. Additional analysis discloses that the N. W. L. B. deferred to the N. L. R. B. whenever the latter tribunal indicated that the N. W. L. B. had unwisely utilized its powers. Thus, upon the request of the N. L. R. B., the N. W. L. B. abandoned the practice of directing the reinstatement of unlawfully discharged employees, and modified its wartime union-security policy after the N. L. R. B. pointed out that the original program might have denied employees the right to select new bargaining agents after a reasonable time. The N. W. L. B. subsequently refused to extend a labor union's maintenance-of-membership arrangement because the organization's majority status was being challenged in an N. L. R. B. representation proceeding. Finally, the N. W. L. B. complied with another N. L. R. B. recommendation and awarded competing uncertified trade unions a limited recognition status only in exceptional cases.

The N. W. L. B. also attempted to implement the principles of the National Labor Relations Act. Besides directing employers to bargain collectively with unions certified by the N. L. R. B., the N. W. L. B. frequently ordered

compliance with N. L. R. B. rulings and thereby effectuated the principles of the Wagner Act without court proceedings. Moreover, the N. W. L. B., aware of the jurisdictional limitations of the N. L. R. B., extended the principles of the National Labor Relations Act to intrastate commerce. Thus it can scarcely be concluded that the N. W. L. B. compromised rights guaranteed by the Wagner Act. Though this agency invaded the area occupied by the N. L. R. B., the fact remains that the N. W. L. B., aware of the supremacy of the N. L. R. B. over organizational disputes, generally deferred to the judgment of the N. L. R. B. in cases which involved principles contained in the Wagner Act. Finally, the available evidence indicates that the N. W. L. B. attempted to extend the collective bargaining process by implementing principles of the National Labor Relations Act wherever appropriate.

Whereas the primary function of the National War Labor Board was to reduce the frequency of wartime strikes, the Fair Employment Practice Committee sought to promote the fullest utilization of the nation's labor supply. Specifically, the F. E. P. C. was empowered to encourage the employment of all workers regardless of their race, religion, color, creed, or national origin. Aware of this national policy, the N. L. R. B. attempted to implement F. E. P. C. principles. Of course, it was beyond the scope of the Board's sphere of authority to enjoin employers from engaging in unfair employment activities, and it could not directly order labor organizations to cease engaging in discriminatory practices. However, the N. L. R. B. utilized its powers of certification to discourage trade unions from discriminating against members because of creed, color, or national origin. Thus the Board withheld certifications from labor organizations which engaged in these practices, and refused to determine bargaining units along racial lines. In addition, the N. L. R. B. was prepared to decertify unions which engaged in discriminatory practices. It is noteworthy that

the N. L. R. B. extended this wartime policy into the post-war period.

Before World War II, the N. L. R. B. attached great importance to the history of collective bargaining as a guide in the determination of bargaining units. With the conversion of industry to war production, however, the weight attributed to this historical factor was modified. As the character of production changed in the war years, the Board at times designated bargaining units unlike the ones found appropriate in the pre-war period. Another wartime problem involved the expanding bargaining unit. To meet the demands of war production, existing industrial facilities increased their personnel, and newly created war plants were required to recruit entire staffs. These circumstances complicated the National Labor Relations Board's certification procedure. In particular the Board, confronted with representation cases involving expanding plants, was required to determine the time at which it would be prepared to exercise its certification powers. If the Board had conducted a representation election when only a small portion of the expanding plant's workers had been recruited, the result might have been quite different from that of an election held among the company's full working force. On the other hand, if the N. L. R. B. had waited until the plant hired its full complement of employees, the currently-employed workers might have been deprived of their rights under the Wagner Act for a long period of time. To resolve this problem, the N. L. R. B. ruled that a certification petition would be entertained when fifty per cent or more of the contemplated working force had already been hired, or when a substantial number of the expected total staff had been employed. The N. L. R. B. believed that the principle of majority rule would be substantially preserved in this manner, and yet the currently-employed workers would not be deprived of their rights under the Wagner Act for an unduly protracted period. After the termination of World War II, bargaining units were often seriously disrupted as a result of industry's

reconversion to peacetime operations. Aware of these circumstances, the N. L. R. B. refused to proceed with the determination of bargaining agents in cases where conversion from war to peacetime pursuits had disrupted the bargaining unit to the extent of rendering collective bargaining temporarily impracticable.

Another important wartime problem of the N. L. R. B. involved the extent to which the tribunal would afford the protection of the Wagner Act to foremen. As a result of wartime conditions, the forces underlying the foremen's trade union movement were given impetus. Accordingly the N. L. R. B. was required to decide in a wartime case whether or not foremen employed throughout industry might constitute appropriate bargaining units. After shifting its position twice, the N. L. R. B. finally decided the celebrated *Packard Motor Car Company* case and ruled that the protection afforded by the National Labor Relations Act would be available to labor organizations composed of foremen. Subsequently the Board indicated that the application of the Act to foremen would not be limited to those supervisors occupying the lower strata of the managerial hierarchy. Foremen whose tasks involve a high degree of responsibility and discretion can, therefore, expect legal protection of their right to collective bargaining. Moreover, the N. L. R. B. directed that foremen of unequal rank may be included in the same bargaining unit, and that supervisors, classified in separate bargaining units, may select production workers' labor organizations as their bargaining agents. On March 10, 1947, the Supreme Court ruled that a foremen's union, not affiliated with a rank-and-file labor organization, may bargain under the protection of the Wagner Act. The Court has not yet decided whether a supervisor's labor organization affiliated with a rank-and-file organization can expect legal protection of the right to collective bargaining.

In evaluating the current N. L. R. B. policy with respect to foremen's unions, it is important to note that supervisors,

like other workers, possess the century-old legal right to self-organization and collective bargaining. This means that foremen may organize and bargain collectively apart from the protection of the National Labor Relations Act. Thus, if foremen are denied statutory protection of their right to collective bargaining, they may utilize their economic power to implement this right. In fact many foremen recognition strikes did occur in 1944 after the N. L. R. B. ruled, in the *Maryland Drydock* case, that supervisors could not bargain under the protection of the Wagner Act.

The N. L. R. B. was also required to decide whether or not plant protection employees might expect legal protection of their right to collective bargaining. In a series of wartime cases, the Board ruled that these employees, like foremen and production workers, could constitute appropriate bargaining units. The provisions of the Wagner Act were also made available to plant security workers inducted into the auxiliaries of the armed forces. With the termination of the war, plant protection employees were demilitarized, and consequently the Supreme Court did not decide the legality of a militarized guard's bargaining unit. The Court still has to decide whether or not demilitarized guards can bargain under the Wagner Act's protection.

The wartime pattern of unfair labor practices closely followed the pre-war model. Many employers continued to engage in activities designed to interfere with the right of employees to self-organization and collective bargaining. However, the wartime trend in the relation of unfair labor practice cases to representation cases indicates the growing acceptance of the principles of the National Labor Relations Act. Thus, in the period 1941-1945, representation cases accounted for 62.7 per cent of all cases filed with the N. L. R. B., whereas such cases constituted only 30.3 per cent of all cases instituted during 1936-1940. Even though these statistics indicate that the relative importance of unfair labor practice cases was sharply decreased during World

War II, the same conclusion with respect to their absolute importance would not be accurate. Whereas 19,119 unfair labor practice cases were submitted to the Board in 1936-1940, only 932 less, or 18,187, were instituted during 1941-1945. From these considerations it is evident that, while a growing share of the energies of the N. L. R. B. are involved in the determination of bargaining agents, it remains true that legal protection of labor's right to self-organization and collective bargaining is still necessary.

Though the content of unfair labor practice cases handled by the N. L. R. B. during World War II largely duplicated pre-war precedents, some of these matters possessed a wartime flavor. Some employers attempted to utilize the war as a pretext for unlawful conduct. For example, company officials were not permitted to assert that a labor organization was backed by Germans where the intent was unlawfully to discourage membership in the union. The wartime program of wage stabilization provided another basis for unfair labor practices. Some firms attempted to influence bargaining elections by requesting the National War Labor Board to award wage increases just prior to representation elections. In such cases it was hoped that the raise would influence the workers' votes in the bargaining poll. However, with the cooperation of the N. W. L. B., the N. L. R. B. checked this tactical stratagem and thereby insured free bargaining elections.

Prompted by provisions of the Selective Service Act of 1940, the N. L. R. B. ruled that workers inducted into military service retained their employee status with the firms in which they were formerly employed. Because of this doctrine, soldier-employees were afforded the rights and privileges contained in the Wagner Act. In fact, these workers, upon their return to civilian occupations, were at times even provided with the immediate opportunity to petition the Board for a redetermination of bargaining agents selected during their absence. On many occasions the

N. L. R. B. also directed the reinstatement with back pay of veterans of World War II who were discharged unlawfully from their civilian jobs just prior to their induction into military service. Finally, servicemen were afforded the opportunity to vote in bargaining elections. Though the N. L. R. B. found it administratively impracticable to permit servicemen to cast ballots by mail during the war years, this privilege was extended to them after the termination of World War II.

Several of the N. L. R. B. wartime policies were induced by the agency's desire to promote the nation's war production program. Thus, early in the war period, the Board modified its procedure in order to speed the disposition of wartime cases, feeling that rapid settlement of Wagner Act disputes would foster materially the uninterrupted operation of war-production industries. To accomplish this objective, the N. L. R. B. expanded the authority of its Regional Directors and fashioned other internal procedural changes. Case-processing time was decreased in this way and the N. L. R. B. was able to dispose of a greater number of wartime disputes. Since the procedural changes proved successful during the war years, they were retained after the termination of hostilities. Apart from the expediting of all wartime disputes arising under the Wagner Act, the N. L. R. B. paid special attention to controversies which directly involved war plants. The National Defense Mediation Board, the United States Conciliation Service, the National War Labor Board, and other governmental agencies frequently requested the N. L. R. B. to give priority to unfair labor practice and representation cases which threatened the disruption of war production. Throughout World War II the Board cooperated fully with these agencies and accorded special consideration to such disputes. In addition, the N. L. R. B. was aware of the nation's serious wartime labor shortage. As already noted, the agency attempted to alleviate this condition by implementing principles of the Fair Employment Practice Committee. Other efforts involved a modification in the Board's

wartime back pay policy, and the agency's refusal to extend the full protection of the Wagner Act to employees engaging in minority-inspired strikes or in work stoppages resulting from workers' refusals to work overtime.

To reduce the frequency of jurisdictional work stoppages arising from representation issues, the Board in 1942 reversed a pre-war doctrine and ruled that its procedures would thenceforth be available for the adjustment of representation disputes which involved rival unions affiliated with the same national organization. As a result, employers, under certain conditions, were authorized to petition the Board for the reconciliation of these controversies. In addition to the willingness of the Board to settle such disputes, the N. L. R. B. during 1942-1945 administered 2,120 elections and "cross-checks" in which affiliates of the American Federation of Labor and of the Congress of Industrial Organizations were the contestants. Workers cast 809,551 valid votes in these C. I. O.-A. F. L. representation elections. During the same years, the N. L. R. B. conducted a total of 17,996 bargaining elections and "cross-checks" in which 4,159,890 valid votes were cast. Labor organizations and employees filed 13,370 unfair labor practice cases with the Board in the period under consideration. In the light of these data, it appears that the number of organizational strikes during World War II probably would have been greater had trade unions, workers, and employers been unable to resort to N. L. R. B. procedures. Some evidence exists which indicates that the Board was probably successful in reducing the number of wartime organizational work stoppages.

Legal implementation of the collective bargaining process appears to have aided the nation's war effort. Proposed amendments to the National Labor Relations Act might be evaluated in the light of this consideration. Thus, proposals designed to weaken the substantive features of the Wagner Act can scarcely be recommended. The wartime experiences

of the N. L. R. B. suggest, in part, that these amendments might encourage the renewed widespread use of the organizational strike. Moreover, the adoption of such proposals would weaken the protection of a fundamental legal right by the federal government and would represent a backward step by a government dedicated to the preservation and expansion of civil rights and liberties.

On the other hand, proposals designed to strengthen the provisions of the Wagner Act merit serious consideration. Thus, strikes resulting from dissatisfaction with N. L. R. B. certifications, or because of union-representation rivalries, appear inconsistent with the spirit, if not with the letter, of the Wagner Act. Accordingly the N. L. R. B. might be authorized to apply for injunctive relief to enjoin such work stoppages. In addition, an amendment placing a positive duty upon labor organizations to bargain collectively might aid the implementation of the Act's purposes. This proposal would place no real hardship upon responsible labor organizations, but would merely discourage tactics employed at times by recalcitrant and uncooperative labor union officials. However, these proposals, if subsequently enacted into law, should contain adequate safeguards to preclude possible weakening of fundamental provisions of the Wagner Act. Finally, the Act's protective features should be made available to foremen and plant protection employees. The frequency of organizational strikes appears to be decreased to the degree that these employees receive legal protection of their right to self-organization and collective bargaining. An amendment to the Wagner Act designed to insure this protection therefore appears appropriate. The adoption of these recommendations will assist the N. L. R. B. to implement collective bargaining, a process necessary for the realization of modern industrial harmony.

VITA

Fred Witney was born in Chicago, Illinois, on November 25, 1917. His elementary and secondary school education was obtained in the Chicago schools. He received his A. B. degree with Highest Honors in Economics from the University of Illinois in 1940 and his A. M. degree from the same university in 1941. He served in the Army of the United States from October, 1942, to July, 1946. The University of Illinois awarded him a scholarship in 1940 and a fellowship in 1941 to enable him to pursue graduate work in economics. He was also awarded a Social Science Research Council Predoctoral Field Training Fellowship in 1942 and a Social Science Research Council Demobilization Award in 1946. He is a member of Phi Beta Kappa, Beta Gamma Sigma, Phi Eta Sigma, Order of Artus, and Alpha Kappa Delta.